

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

RICHARD VAN DYKE,)	
Petitioner)	
)	
V)	No. 15 TT 96
ILLINOIS DEPARTMENT)	Chief Judge James M. Conway
OF REVENUE,)	
Respondent)	
)	

ANSWER

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to the Petition states as follows:

1. A Notice was issued by the Department on or about August 21, 2014, identifying Petitioner as a Responsible Officer, Partner or Individual of D’s Autoplaza, Inc., which attached a Taxpayer Statement for D’s Autoworld, Ltd., covering the tax periods of:
 - a) withholding income tax - June 30, 2012
 - b) sales/use tax and E911 surcharge - December 31, 2011, through September 30, 2012
 - c) ST-556 sales tax - February 20, 2012 through March 19, 2012,in the total amount of \$19,870.84, a copy of which is attached hereto as Exhibit “A”.

ANSWER: The Department admits that a Notice was issued by the Department on or about August 21, 2014 which is attached to the petition as Exhibit “A”. The Department further states that the Notice speaks for itself and therefore denies the remaining allegations in paragraph 1 of the petition.

2. A penalty assessment was issued by the Department on or about August 21, 2014, against Petitioner, arising from the unpaid tax liability against D’s Autoworld, Ltd., covering the tax periods of:

a) sales/use tax and E911 surcharge - December 31, 2011, through September 30, 2012

b) ST-556 sales tax - February 20, 2012, through March 29, 2012
in the total amount of \$18,123.21, being an amount equal to the said tax liability, a copy of which is attached hereto as Exhibit "B".

ANSWER: The Department admits that a Notice was issued by the Department on or about August 21, 2014 which is attached to the petition as Exhibit "B". The Department further states that the Notice speaks for itself and therefore denies the remaining allegations in paragraph 2 of the petition.

3. A second penalty assessment was issued by the Department on or about August 21, 2014, against Petitioner, arising from the unpaid tax liability against D's Autoworld, Ltd. covering the tax period of June 30, 2012, in the total amount of \$1,747.51, a copy of which is attached hereto as Exhibit "C".

ANSWER: The Department admits that a second penalty assessment was issued by the Department on or about August 21, 2014 which is attached to the petition as Exhibit "C". The Department further states that the Notice speaks for itself and therefore denies the remaining allegations in paragraph 3 of the petition.

4. A further Notice was issued by the Department on or about August 21, 2014, against Petitioner, arising from the unpaid tax liability against D's Autoworld, Ltd., covering the tax period of December 31, 2013, for business income tax, in the amount of \$7,309.64, a copy of which is attached hereto as Exhibit "D".

ANSWER: The Department admits that it issued the Notice attached to the Petition as Exhibit "D" on or about August 21, 2014. The Department further states that the Notice speaks for itself and therefore denies the remaining allegations in paragraph 4 of the petition.

5. A third penalty assessment was issued by the Department on or about December 8, 2014, against Petitioner, arising from the unpaid tax liability against D's Autoworld, Ltd., covering the tax periods of:

a) sales/use tax and E911 surcharge - December 31, 2011, through September 30, 2012

- b) ST-556 sales tax - February 20, 2012, through December 17, 2012 in the total amount of \$18,218.82, being an amount equal to the said tax liability, a copy of which is attached hereto as Exhibit "E".

ANSWER: The Department admits that it issued the Notice attached to the Petition as Exhibit "E" on or about December 8, 2014. The Department further states that the Notice speaks for itself and therefore denies the remaining allegations in paragraph 5 of the petition.

6. Petitioner was an individual not affiliated with D's Autoworld, Ltd, an Illinois corporation, during the tax periods referred to above, as an officer, nor director nor shareholder. The address of D's Autoworld, Ltd. was 111 N. Dirksen Parkway, Springfield, IL 62702.

ANSWER: The Department admits that the address of D's Autoworld, Ltd. was 111 N. Dirksen Parkway, Springfield, IL 62702. The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 6 of the petition and therefore neither admits or denies said allegations.

7. On or about July 3, 2000, D's Autoworld, Ltd. was incorporated in the State of Illinois.

ANSWER: The Department admits the allegations in paragraph 7 of the petition.

8. At or soon thereafter, Petitioner became a co-owner of D's Autoworld, Ltd.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 8 of the petition and therefore neither admits or denies said allegations.

9. In the year 2004, Petitioner sold his shares of stock in D's Autoworld, Ltd. and simultaneously was replaced as an officer and director thereof.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 of the petition and therefore neither admits or denies said allegations.

10. Since said sale of stock and replacement as an officer and director of D's Autoworld, Ltd., Petitioner has not been employed by, held any office in or been a director of D's Autoworld, Ltd., nor been responsible for the preparation and filing of tax returns for D's Autoworld, Ltd. nor had any bookkeeping duties for D's Autoworld, Ltd.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 of the petition and therefore neither admits or denies said allegations.

11. On or about December 13, 2012, Petitioner signed as an incorporator of D's Autoplaza, Inc. only and was reimbursed for his expenses for such incorporation on or about January 2, 2013, in the sum of \$550 from Babaz Auto Sales in a verbal agreement.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 of the petition and therefore neither admits or denies said allegations.

12. Along with filing the said incorporation documents, Petitioner applied for a tax identification number for Autoplaza, Inc., which was the extent of his involvement with D's Autoplaza, Inc.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12 of the petition and therefore neither admits or denies said allegations.

13. D's Autoplaza, Inc. never purchased any assets from D's Autoworld, Ltd., and there were no agreements verbal or written to transact business between these separate and distinct corporate entities.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 13 of the petition and therefore neither admits or denies said allegations.

14. Petitioner was never an officer, shareholder nor director of D's Autoplaza, Inc. and did not transact any business for D's Autoplaza, Inc. nor purchased any assets for D's Autoplaza, Inc., nor in any other way acted as a fiduciary for D's Autoplaza, Inc.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 14 of the petition and therefore neither admits or denies said allegations.

15. On or after August 21, 2014, Petitioner received the aforementioned tax liability and penalty notices regarding his alleged personal liability for taxes incurred by D's Autoworld, Ltd., for periods during which Petitioner was no longer affiliated with said corporation, that is, for taxes incurred after Petitioner had sold his stock, replaced as an officer and director of said corporation.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 15 of the petition and therefore neither admits or denies said allegations.

16. On or after August 21, 2014, Petitioner received the aforementioned notice that he had been identified as a responsible officer, partner or individual of D's Autoplaza, Inc., and would be assessed the aforementioned taxes and penalties arising from the operation of D's Autoworld, Ltd..

ANSWER: The Department admits the allegations in paragraph 16 of the petition.

APPLICABLE LAW

The Department denies the Petitioner's conclusions with respect to the "applicable law" and further states that the cited statutes speak for themselves and therefore deny Petitioner's description thereof.

ALLEGED ERRORS

1. The Department erred in finding Petitioner personally liable for the corporate taxes listed below when Petitioner was, at the time such tax liability arose, no longer a officer, director or shareholder of D's Autoworld, Ltd.:

(a) withholding income tax - June 30, 2012

- (b) sale/use tax and E911 surcharge - December 31, 2011 through September 30, 2012
- (c) ST-556 sales tax - February 20, 2012 through March 19, 2012.

ANSWER: The allegations in paragraph 1 consist primarily of legal and factual conclusions and are denied.

- 2. The Department erred in finding Petitioner personally liable for the penalties assessed on the all unpaid taxes on the aforementioned taxes.

ANSWER: The allegations in paragraph 2 consist primarily of legal and factual conclusions and are denied.

- 3. The Department erred in not giving relevance to the evidence provided it prior to its finding of personal liability by Petitioner.

ANSWER: The allegations in paragraph 3 consist primarily of legal and factual conclusions and are denied.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Notices of Penalty Liability at issue are correct as issued;
- c. ordering judgment in favor of the Department and against the Petitioner; and granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: _____


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Special Assistant Attorney General

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**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

RICHARD VAN DYKE

v.

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE**

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15-TT-96

**AFFIDAVIT OF MARK DYCKMAN
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Legal Services Bureau.
2. My current title is Deputy General Counsel.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition paragraphs 6, 8, 9, 10, 11,12,13,14 and 15.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true.



Mark Dyckman
Deputy General Counsel
Illinois Department of Revenue

DATED: 7-23-15